SUPREME COURT, U. S.

FEB 2 1967

JOHN F. DAVIS, CLERK

Supreme Court of the United States

OCTOBER TERM, 1966

No. 456

BEYS AFROYIM,

Petitioner,

—v.—

DEAN RUSK, as Secretary of State,

Respondent.

REPLY BRIEF FOR PETITIONER

NANETTE DEMBITZ
New York Civil Liberties Union
156 Fifth Avenue
New York, N. Y. 10010
Attorney for Petitioner

Supreme Court of the United States

OCTOBER TERM, 1966

No. 456

BEYS AFROYIM,

Petitioner,

—v.—

DEAN RUSK, as Secretary of State,

Respondent.

REPLY BRIEF FOR PETITIONER

1. *No Considered Judicial or Legislative Judgment as to Connection Between Voting and Allegiance.*

Respondent errs insofar as he indicates that this Court in *Perez*[1] (Resp. Br. pp. 3, 7) or the Congress arrived at a considered judgment that a vote by an American citizen in a foreign election manifested a failure in his allegiance to the United States. Regarding the basis for the *Perez* majority opinion, see Justice Brennan's concurrence in *Trop* v. *Dulles*, 356 U. S. 86, at pp. 105-107. As to the legislative history of Section 401(e), it shows a complete lack of legislative attention to principles, precedents, and custom, either national or international, on voting, allegiance, or expatriation.[2] We reiterate that the legislative

[1] *Perez* v. *Brownell*, 356 U. S. 44.

[2] The two conclusory sentences quoted by respondent from a Cabinet Committee report (Resp. Br. pp. 8-9), constitute the entire

failure to analyze and deliberate on the soundness of this unprecedented and drastic provision is attributable to its genesis in a desire to punish a particular suspected group of voters—those in the Saar plebiscite (see Petr. Br. pp. 9-12). The statute thus comes to this Court without the initial claim to reasonableness that arises from a considered Congressional determination.

2. *No Congressional Power to Expatriate on the Basis of "Connotations of Political Commitment."*

Respondent reasons from the Congressional power to denationalize an American citizen when he is naturalized by a foreign state, that Congress can impose a deprivation of citizenship whenever a citizen's act has "sufficient connotations of political commitment" to a foreign government (Resp. Br. p. 11). But certainly there are vast differences between the two powers.

The Congressional authority to denationalize on the basis of naturalization in a foreign state follows from the very purpose underlying the establishment of expatriation in our law. The principle of expatriation was adopted to permit the acquisition of a new citizenship in place of the old; the concept in expatriation was and is of a single, though transferable, basic allegiance (see 356 U. S. at pp. 67-68; Petr. Br. p. 8; *Savorgnan* v. *United States,* 338 U. S. 491, 500). Moreover, obtaining foreign naturalization and taking an oath of foreign allegiance are acts addressed precisely, consciously and deliberately to the existence of citizenship and allegiance. This Government's recognition, like other

---

discussion of this provision, except for the following sentence: "If this provision had been in effect when the Saar plebiscite was held, Americans voting in it would have been expatriated."

sovereigns, "that acquisition of foreign nationality ordinarily shows a renunciation of citizenship" (356 U. S. at p. 68), is a far cry from an indefinite and sweeping power to expatriate American citizens on the basis of acts with "connotations of political commitment," as proposed by respondent.[3]

Respondent's statement as to the necessary connotation of allegiance to the United States from a vote cast in an election here (Resp. Br. p. 12), seems strange and short-sighted in view of the clear precedents to the contrary (see Petr. Br. p. 13). The current legal limitations in this country of the franchise in terms of citizenship, cannot be translated into an inherent link between the two and into an inference that the act of voting in a foreign country, whether or not the ballot is restricted to citizens of that country, shows allegiance to it. The error in this transition seems similar to the error in deducing that all men are Socrates because Socrates is a man.

3. *Invalidity of Statute Under Respondent's Proposed Construction.*

Respondent indicates doubt of the constitutionality of section 401(e) as written, suggesting that it may be valid if limited to nationwide elections (Resp. Br. pp. 4, 12, 15). But even if this Court could engage in a re-writing of the

---

[3] The statute applied in *Mackenzie* v. *Hare*, 239 U. S. 299 (Resp. Br. p. 11) was explicitly addressed to the status of an American woman when she obtained and while she possessed foreign citizenship.

Petitioner cannot accept respondent's explanation of *Savorgnan* v. *United States*, 338 U. S. 491 (Resp. Br. p. 14), since the Court there stated that the question before it was the effect upon Mrs. Savorgnan's American citizenship of her obtaining Italian citizenship (338 U. S. at pp. 492, 500).

statute—contrary to its established administrative and judicial applications (see Petr. Br. p. 14, n. 14)—the suggested formulation presents additional grounds of invalidity besides those inhering in the terms of the statute. Respondent's position would require a reading of section 401(e) to include an invalid delegation of legislative power; surely Congress could not delegate, without even a specification of standards, the authority to select elections that effect expatriation.[4] Further, the additional uncertainty as to when a vote abroad is expatriative; would aggravate the vice of the statute in failing to provide for notice to the citizen of the grave consequence of his innocuous act of voting abroad (Petr. Br. p. 18). And the statute would nevertheless continue to exert a chilling effect on the right of expression abroad (see Petr. Br. p. 22) with respect to all elections within its apparent ambit.

4. *Conjecture as to Embarrassment in Foreign Relations.*

Though the *Perez* opinion hypothesizes embarrassment in this country's foreign relations from an American citizen's voting abroad, even *Perez* does not support respondent's dangerous suggestion (Br. p. 15) that the "potentiality of embarrassment" strengthens the inference of the citizen's commitment to another government.

Respondent de-emphasizes the *Perez* supposition of embarrassment in our relations with the country where the voting occurs (Br. p. 17)—perhaps because one can equally or better suppose that action by this Government against a citizen on the basis of his lawful act in another country would seem an affront to the latter. Respondent adds a new conjecture—that countries other than the one where

[4] Cf. *Youngstown Co.* v. *Sawyer*, 343 U. S. 579, 587-588.

the American casts his vote will view him as acting at the direction of this Government. But certainly the international friction resulting from charges that Americans are engaging in espionage and acting in other secretive ways as Government agents (Resp. Br. p. 17), does not support the supposition that such an agency will be inferred from their open casting of a ballot.

Neither the *Perez* speculation as to embarrassment nor the respondent's speculation find any support whatsoever in the legislative history (see Petr. Br. p. 20), or in any event either before or since the passage of the statute, despite the thousands of citizens who have cast their votes abroad and been expatriated therefor (see Petr. Br. p. 15, n. 15). Almost anything is possible. But a wholly remote and conjectural possibility cannot justify such a drastic measure as expatriation and the restriction of the First Amendment right of expression (see Petr. Br. pp. 19, 23).[5]

Respectfully submitted,

NANETTE DEMBITZ
New York Civil Liberties Union
156 Fifth Avenue
New York, N. Y. 10010
Attorney for Petitioner

January 1967

---

[5] Even if the casting of a vote is not deemed within the protection of the First Amendment, and even if the First Amendment area were deemed excluded from the *Perez* doctrine, there are manifest dangers in the view that Congress can impose denationalization as a corrective for potential embarrassment from our citizens' conduct abroad. The power could be applied to various types of non-First Amendment activity—for example, any violation by an American of the law of his foreign country of residence.